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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 13 2009

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in business. The petitioner initially described herself as an "editor and researcher of enterprise culture." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that she qualifies for classification as an alien of exceptional ability in business, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a personal statement and two witness letters.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The first issue under consideration is whether the petitioner qualifies either as a member of the professions holding an advanced degree or as an alien of exceptional ability in business. The U.S. Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 204.5(k)(2) provides the following definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. . . .
>
> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The petitioner holds an advanced degree, having earned a Master of Business Administration degree from Woodbury University in 1994. Holding such a degree, however, does not establish that she is a member of the professions. The petitioner neither claimed nor demonstrated that a bachelor's degree is the minimum requirement for entry into her intended occupation. (As the director has noted, the petitioner has only vaguely identified what that intended occupation is.)

We now consider the petitioner's claim of exceptional ability in business. Under the USCIS regulations at 8 C.F.R. § 204.5(k)(3)(ii), to show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
>
> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
>
> (C) A license to practice the profession or certification for a particular profession or occupation;
>
> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
>
> (E) Evidence of membership in professional associations; or
>
> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Because the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

In a statement accompanying her initial submission, the petitioner stated that she seeks classification "based on my exceptional ability in the research and teaching of business administration." She did not specifically discuss the above regulations, but some of her claims relate to the following provisions:

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A)

The petitioner holds a Master of Business Administration degree from Woodbury University.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B)

The petitioner claimed the following employment experience:

> From 1984 to 1985 I was editor for Printing and Design Magazine; from 1986 to 1987 I was editor for Better Life Monthly; from 1987-1989 I was executive editor for Leader Magazine; from 1989 to 1990 I was planning man[a]ger for the same magazine; from 1991 to 1994 I was correspondent of the same magazine; from 1994 to 2003 I was president and editor-in-chief for Leader Magazine. From 2003 to 2006 I was executive vice-president of OPUS (Taiwan). From 2005 to 2007 I have worked as Consultant for CCST [Chinese Cancer Society Taiwan.]

The petitioner submitted no letters from employers to corroborate the above assertions. The petitioner submitted photographs of several magazine covers, but these covers do not establish that the publications named above employed the petitioner. Other materials are in Chinese, without the English translations required by 8 C.F.R. § 103.2(b)(3).

In a subsequent submission, the petitioner submitted translated certifications attesting to her work as a public relations and/or marketing consultant for the following companies:

Employer	Dates
Yuteng Electronic	7/1/2005-6/30/2007
Far East Technology Group	1/1/2006-12/31/2007
Taiwan Uyemura	7/1/2007-6/30/2009 [scheduled term]

The above information covers less than two years prior to the petition's June 2007 filing date. When she filed the petition, the petitioner did not mention her then-ongoing contracts with Yuteng Electronic or Far East Technology Group. Also, the petitioner does not claim to seek employment as a public relations consultant. Therefore, her work for these companies does not appear to represent experience in the occupation she seeks in the United States.

The petitioner submitted nothing to address 8 C.F.R. §§ 204.5(k)(3)(ii)(C) through (F).

The director denied the petition on January 9, 2009, stating that the petitioner's "proposed field of endeavor is not entirely apparent. . . . The evidence does not establish that the petitioner possesses exceptional ability or '. . . a degree of expertise significantly above that ordinarily encountered in business.'"

On appeal, the petitioner states that her degrees satisfy "one required item of your standard for adjustment of status based on exceptional ability, though I don't think the degree is more important than actual ability." The petitioner added:

> I have no right to demand the US immigration officer to change the policy that emphasizes academic degree, but I would like to suggest that the immigration officer . . . give more weight on the applicant's creative ability than on his academic degree, especially for a person from Taiwan or China mainland, where the traditional way of academic training is really very effective.

8 C.F.R. § 204.5(k)(3)(iii) states that, if the standards listed at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply to the beneficiary's occupation, then the petitioner may submit comparable evidence to establish the beneficiary's eligibility. Here, the petitioner has not established that those standards do not readily apply to her occupation. She cannot simply assert that peculiarities of Chinese culture entitle her to propose a vague, alternative standard of eligibility.

The regulations at 8 C.F.R. § 204.5(k)(3)(ii) are binding on all USCIS employees in the performance of their duties. The six regulatory standards provide objective measurements of an alien's abilities. Even if there existed a provision to allow the director to consider the petitioner's "creative ability" instead of those requirements, the petitioner has neither explained how to measure her "creative ability" nor provided persuasive evidence in that regard. She has simply documented her work as a public relations consultant, and claimed to have worked in publishing, as an editor and in other jobs.

The petitioner states that her work in publishing is a "hobby," aside from her "concurrent job as advisor of business management in several large enterprise[s]." Regarding her consultancy positions, she states: "If I were not with exceptional ability, it would not be possible for me to be at that highly-paid position for strictly-selected person[s]." We do not accept the argument that the very nature of the petitioner's employment is evidence of exceptional ability.

The petitioner asserts that she is "highly-paid," which would satisfy the requirements at 8 C.F.R. § 204.5(k)(3)(ii)(D) which call for evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. The petitioner, however, has merely provided figures from her own consulting contracts. She has not provided any basis for comparison to show that she is "highly-paid" relative to other consultants in her specialty.

The only new exhibits submitted on appeal are two witness letters. One letter indicates that the petitioner volunteers as a Chinese language teacher at a private school in Ukiah, California. The other letter, from the owner of a Chinese bookstore in Flushing, New York, indicates that several conversations with the petitioner have revealed her exceptional ability. These letters do not begin to meet the evidentiary standards required for a finding of exceptional ability in business.

For the reasons specified above, the petitioner has not met the regulatory requirements to qualify for classification as an alien of exceptional ability in business.

The remaining issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The record does not contain this required document, or the equivalent sections of successor document ETA Form 9089, and therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not raise this issue. We will, therefore, review the matter on the merits rather than leave it at a finding that the petitioner did not properly apply for the waiver.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national

interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In a statement submitted with the initial filing, the petitioner stated:

> The US is the most developed country of the world. However, recently many other countries began to catch up. One essential merit of those countries is their particular enterprise culture, which is nourished by their traditional culture. For example, the workers of Far-East such as Taiwan, Korea, and Japan are extremely diligent because of their common inheritance of traditional Chinese culture, which promotes frugality and diligence. . . . After the Second World War the US accelerated its development by emphasizing the conversion of science to technology. . . . However, the well-to-do condition of life diminishes the diligence and frugality of American people. . . . From the 1990s until now almost the majority of low-price commodities came from . . . Taiwan and China mainland. . . . Such competition should not be neglected if the US will keep it's [*sic*] A-1 position in the present-day world. . . .
>
> If I am allowed to work longer in the US, I shall establish a research and advisory institute to speed up the transformation of . . . private-relationship-based enterprises, in order to make them more suitable for the development of Us [*sic*] economy. I shall also cooperate with universities to provide consultancy for large and small enterprises to analyze and amend their managerial problems.

In a request for evidence dated October 16, 2008, the director instructed the petitioner to establish that her consulting work is national in scope, and that she "has a past record of specific prior achievement as a consultant that justified projections of future benefit to the national interest." In response, the petitioner submitted information about the Taiwanese companies that have hired her as a consultant.

In denying the petition, the director repeated the assertion that the petitioner's "proposed field of endeavor is not evident." The director found that the petitioner had not established "influence in the field," or that she "would serve the national interest to a substantially greater extent than the majority of her colleagues." The director acknowledged the petitioner's response to the request for evidence, but stated that the petitioner's submission "did not address the question."

On appeal, the petitioner claims that Japan owes its postwar prosperity to its "adoption of ancient China experience [*sic*]." Even if the petitioner had proven this claim, which she has not done, it does not follow that Taiwanese business consultants serve the national interest more than consultants from other countries, much less that the petitioner, specifically, serves the national interest more than other Taiwanese business consultants.

Even if the petitioner had submitted any evidence (which she has not) to support her sweeping generalization that people raised in Chinese culture are more diligent and frugal than those raised in American culture, this would not mean that the petitioner qualifies for a waiver simply because she is from Taiwan. Congress gave no indication that they intended for a given alien's nationality to play any role in granting the waiver. USCIS must consider waiver requests individually, on a case-by-case basis, rather than rely on generalizations or stereotypes.

Here, the petitioner has not shown that she has any experience whatsoever training American businesses in Chinese cultural values, nor has she shown that such training would improve the performance of such businesses. Her only documented experience is as a consultant to companies that need no exposure to Chinese culture, because they are already based in Taiwan. The petitioner's waiver application is based on little more than her presumption that United States businesses will prosper once they retain her consulting services. Such a presumption is not, and cannot be, an adequate basis for permanent immigration benefits or the special additional benefit of a national interest waiver.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.